

CHAPTER NO. 924

HOUSE BILL NO. 3483

By Representatives McMillan, Rinks, Bowers

Substituted for: Senate Bill No. 3428

By Senators Crutchfield, McLeary

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4 and Chapter 6, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as new subdivisions:

() "Affiliated business entity" means:

(A) a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest;

(B) a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer; or

(C) a business entity in which a person described in subdivision (B) directly or indirectly has more than fifty percent (50%) ownership interest. For purposes of this subdivision, a non-corporate entity is more than fifty percent (50%) owned if upon liquidation more than fifty percent (50%) of the assets of the non-corporate entity directly or indirectly accrue to the entity having the ownership interest.

() "Intangible expense" means expenses related to, or in connection with, the acquisition, use, maintenance or management, ownership, sale, exchange, license, or any other disposition of intangible property to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income.

() "Intangible income" means income related to, or in connection with, the acquisition, use, maintenance or management, ownership, sale, exchange, license, or any other disposition of intangible property to the extent such amounts are included or includable in determining federal taxable income.

() "Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, formulas, designs, patterns, processes, formats, and similar types of intangible assets.

SECTION 2. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subdivision (L):

(L) Any otherwise deductible intangible expense paid, accrued or incurred in connection with a transaction with one or more affiliated business entities.

SECTION 3. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as new subdivisions (N) and (O):

(N) Any intangible expense paid, accrued or incurred in connection with a transaction with one or more affiliated business entities that has been disclosed in accordance with § 67-4-2006(d)(1).

(O) Any intangible income included in the computation of a taxpayer's net earnings that is accrued or earned in connection with a transaction with one or more affiliated business entities to the extent that the corresponding intangible expense is not disclosed as required by § 67-4-2006(d)(1) or is otherwise disallowed under the provisions of this part.

SECTION 4. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting current subsection (d) in its entirety and substituting instead the following new subsections (d) and (e):

(d)(1) Any taxpayer that pays, accrues or incurs intangible expenses as a result of a transaction with one or more affiliated business entities must disclose such intangible expenses on the face of the franchise and excise tax return filed in accordance with § 67-4-2015 and complete the appropriate schedule as required by the Commissioner.

(2) Any taxpayer that deducts intangible expenses arising from a transaction with one or more affiliated business entities in determining Tennessee net earnings that fails to disclose such intangible expenses will be subject to a negligence penalty as set forth in § 67-1-804(b)(2).

(3) If a taxpayer does not meet the disclosure requirements set forth in section one (1) above the Commissioner shall make the adjustments set forth in § 67-4-2006(b)(1)(L). As such, the taxpayer will have the remedies set forth in § 67-1-1801, et seq.

(e) The amount computed under subsections (a), (b), (c), and (d) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in § 67-4-2007.

SECTION 5. Tennessee Code Annotated, Section 67-4-2108(a)(6), is amended by deleting subdivision (C) in its entirety and substituting instead the following:

(C) "Finished goods inventory" means tangible personal property that is:

(i) Owned by the taxpayer;

(ii) Stored in a facility used primarily for manufacturing, warehousing, or distribution of such inventory;

(iii) Held for wholesale or retail sale by the taxpayer, but not sold over-the-counter to consumers at the location where stored;

(iv) Shown as inventory on the taxpayer's books and records kept in accordance with generally accepted accounting principles; and

(v) In need of no further fabrication or processing by or for the taxpayer; except, in the case of configuring, testing or packaging of computer products;

SECTION 6. Tennessee Code Annotated, Section 67-4-2008(a), is amended by inserting the following as a new subdivision immediately after subdivision (7) and redesignating the remaining subdivisions accordingly:

(8) Any limited partnership or limited liability company organized exclusively for the purpose of providing affordable housing that meets the following criteria:

(A) The entity must have received an allocation of low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; and

(B) An "extended low-income housing commitment" as defined in Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended, must be in effect with respect to each residential building owned by the entity for the period covered by the return.

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

Any taxpayer that moves otherwise taxable aircraft into Tennessee in conjunction with establishing a new "headquarters facility" as defined by § 67-6-224 shall be exempt from any sales and use tax liability that arises solely as a result of moving such aircraft into the state.

SECTION 8. Tennessee Code Annotated, Section 67-4-702(a)(16), is amended by inserting the following language between the first and second sentences:

"Sales price" for services rendered by a person for an affiliated business entity does not include any amount that is accounted for as a reasonable allocation of cost incurred in providing the service.

SECTION 9. Tennessee Code Annotated, Section 67-4-709, is amended by adding the following as a new sentence at the end of subsection (c):

The amount of taxation set forth in subdivisions (b)(1) through (3) shall be computed upon the sales price of the item or service subject to tax.

SECTION 10. Tennessee Code Annotated, Section 67-4-715, is amended by deleting from subsection (a) the language "upon the form prescribed, prepared and furnished by the tax collecting official" and substituting instead the language "upon the form prescribed by the commissioner of revenue and furnished by the tax collecting official" and is further amended by deleting from subsection (b) the language "upon request, be furnished forms by the appropriate tax collecting officials" and substituting instead the language "upon request, be provided forms prescribed by the commissioner of revenue and furnished by the appropriate tax collecting official" and is further amended by deleting from subsection (d) the language "instructions indicating" and substituting instead the language "instructions prescribed by the commissioner of revenue indicating".

SECTION 11. Tennessee Code Annotated, Section 67-6-346, is amended by deleting the language therein in its entirety and substituting instead the following:

There shall be a credit of one hundred percent (100%) of the sales and use tax paid with respect to any system, method, improvement, structure, device or appliance appurtenant thereto that is required and primarily used to bring the

purchaser into compliance with pollution control laws or regulations, whether federal, state, or local, when such pollution is created in the course of the purchaser's regular business activities. The credit provided in this section shall not be available to persons primarily engaged in processing, treating, or controlling pollution created by others. Copies of certificates provided for in § 67-5-604 or other evidence that is satisfactory to the commissioner shall be furnished to the commissioner by the purchaser to establish entitlement to the credit. Instead of taking the credit available under this section or § 67-6-507(i) and (j), the purchaser may apply to the commissioner for a refund of the taxes paid or for authority to make purchases exempt from the tax.

SECTION 12. Tennessee Code Annotated, Section 67-6-331, is amended by deleting the present subsection (a) and substituting instead the following:

(a) There shall also be exempt from the tax imposed by this chapter, the transfer, by any dealer in personal property, of motor vehicles with a gross vehicle weight rating (GVWR) of a class three (3) or above as defined in § 55-4-113 and trailers, semi-trailers and pole-trailers as defined in §§55-1-105 and 55-4-113 which shall be used to transport passengers or cargo principally in interstate or foreign commerce by a carrier holding common or contract carrier operating authority granted by the federal government or other state regulatory agency.

SECTION 13. Tennessee Code Annotated, Section 67-6-331, is further amended by deleting from subsection (c) the language "is used in the service of passenger or cargo transportation" and substituting instead the language "is used to transport passengers or cargo".

SECTION 14. Tennessee Code Annotated, Section 67-4-2109(c)(1)(), as amended by Chapter ____, Section 1, of the Public Acts of 2004 (House Bill No. 3480, Senate Bill No. 3418), which reads as follows:

() "Economically distressed county" means:

(i) An economically distressed county as defined by the department of economic and community development; or

(ii) A county that meets one (1) of the following criteria for any month during the twenty-four (24) months immediately prior to the creation of any net new full-time employee job for which a job tax credit is sought pursuant to this subsection (c), based on monthly statistics from the department of labor and workforce development:

(a) The average number of dislocated workers in the county exceeds the average number of dislocated workers in Tennessee; or

(b) The per capita income of the county is less than Tennessee's average per capita income.

is further amended by deleting the language "An economically distressed county as defined by the department of economic and community development; or" and substituting instead the following language:

An economically distressed county as defined by the department of economic and community development. For purposes of this subdivision, the

department of economic and community development shall define “economically distressed county” based on unemployment, per capita income and poverty levels of all Tennessee counties using statistical data prepared by any agency of the state or federal government no later than July 1 of each year. Notwithstanding a determination as economically distressed, based on an annual evaluation as of July 1 of each year, the commissioner of economic and community development may determine a county is economically distressed if such county experiences substantial characteristics of economic distress including, but not limited to, major loss of employment, recent high unemployment rates, traditionally low levels of family incomes, high levels of poverty and high concentrations of employment in declining industries; or

SECTION 15. Tennessee Code Annotated, Section 67-4-702(a)(), as amended by Chapter ___, Section 11, of the Public Acts of 2004 (House Bill No. 3480, Senate Bill No. 3418), which reads as follows:

() “Affiliated business entity” means a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest or a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer.

is further amended by deleting the language “‘Affiliated business entity’ means a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest or a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer” and substituting instead the following language:

() “Affiliated business entity” means:

(A) a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest;

(B) a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer; or

(C) a business entity in which a person described in subdivision (B) directly or indirectly has more than fifty percent (50%) ownership interest. For purposes of this subdivision, a non-corporate entity is more than fifty percent (50%) owned if upon liquidation more than fifty percent (50%) of the assets of the non-corporate entity directly or indirectly accrue to the entity having the ownership interest

SECTION 16. Tennessee Code Annotated, Title 67, Chapter 6, is amended by adding the following section:

67-6-3__.

Purchases of detailing services and repair services performed on motor vehicles that are held for resale are exempt from the tax imposed by this chapter, if such vehicles are held for resale by a licensed motor vehicle dealer or licensed automobile auction. A person selling detailing services shall, however, be considered to be the user and consumer of any articles of tangible personal property which that person purchases or uses in performance of such detailing services. For purposes of this section, “detailing services” means and includes services which cosmetically or functionally refurbish or restore to like-new or serviceable condition or appearance and which are intended to enhance or

increase the sales value of used or pre-owned motor vehicles in preparation for the vehicles being offered for sale at wholesale or retail in the ordinary course of the seller's business, or which cosmetically or functionally prepare new vehicles for sale at wholesale or retail in the ordinary course of the seller's business. "Motor vehicle detailing services" shall not include washing or cleaning of motor vehicles except when performed in conjunction with the activities described in the foregoing sentence. For purposes of this section "motor vehicle" shall mean a motor vehicle subject to registration and titling in this state pursuant to § 55-3-101, and "licensed motor vehicle dealer" and "licensed automobile auction" shall mean a person licensed as such pursuant to Title 55, Chapter 17.

SECTION 17. Tennessee Code Annotated, Section 67-6-102(a)(9), is amended by inserting the following language between the first and second sentences:

"Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by non-affiliated business entities whether commercial, governmental or foreign, provided that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(c). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services.

SECTION 18. Tennessee Code Annotated, Section 67-4-2108(a)(3), is amended by inserting the following language between the first and second sentences:

Notwithstanding any provision of this subdivision (3) to the contrary, railroad companies as defined by the uniform system of accounts in Part 1201 of Title 49, Code of Federal Regulations, as amended, may compute the value of their "property" in accordance with the method used for federal tax purposes so long as such method fairly reflects the property's value for purposes of the tax levied by this part.

SECTION 19. Sections 1 through 5 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax periods beginning on or after January 1, 2004, the public welfare requiring it. Section 6 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax periods ending on or after June 30, 2003, the public welfare requiring it. Section 7 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall expire on July 1, 2008, the public welfare requiring it. Sections 8, 9, and 15 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax periods for which returns were required to be filed on or after January 1, 2001, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 20, 2004



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2004



PHIL BREDESEN, GOVERNOR